

University of Denver

Digital Commons @ DU

All Publications

Colorado Legislative Council Research
Publications

12-2005

0546 Interim Committee to Study the State Procurement Process

Colorado Legislative Council

Follow this and additional works at: https://digitalcommons.du.edu/colc_all

Recommended Citation

Colorado Legislative Council, "0546 Interim Committee to Study the State Procurement Process" (2005).
All Publications. 579.
https://digitalcommons.du.edu/colc_all/579

This Article is brought to you for free and open access by the Colorado Legislative Council Research Publications at Digital Commons @ DU. It has been accepted for inclusion in All Publications by an authorized administrator of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.



Interim Committee to Study the State Procurement Process

**Report to the
COLORADO
GENERAL ASSEMBLY**

Colorado Legislative Council
Research Publication No. 546
December 2005

RECOMMENDATIONS FOR 2005

**INTERIM COMMITTEE TO STUDY THE STATE
PROCUREMENT PROCESS**

**Report to the
Colorado General Assembly**

**Research Publication No. 546
December 2005**

COLORADO GENERAL ASSEMBLY



EXECUTIVE COMMITTEE
Sen. Joan Fitz-Gerald, Chairman
Rep. Andrew Romanoff, Vice Chairman
Sen. Ken Gordon
Sen. Andy McElhany
Rep. Alice Madden
Rep. Joe Stengel

STAFF
Kirk Milnek, Director
Daniel Chapman, Assistant Director,
Administration
Deborah Godshall, Assistant Director,
Research

LEGISLATIVE COUNCIL

ROOM 029 STATE CAPITOL
DENVER, COLORADO 80203-1784
E-mail: lcs.ga@state.co.us

303-866-3521 FAX: 303-866-3855 TDD: 303-866-3472

COMMITTEE
Sen. Norma Anderson
Sen. Peter Groff
Sen. Steve Johnson
Sen. Ron Teck
Sen. Ron Tupa
Sen. Sue Windels
Rep. Dorothy Butcher
Rep. Bill Cadman
Rep. Mike Garcia
Rep. Diane Hoppe
Rep. Mike May
Rep. Angle Paccione

December 2005

To Members of the Sixty-fifth General Assembly:

Submitted herewith is the final report of the Interim Committee to Study the State Procurement Process. This committee was created pursuant to SJR 05-043. The purpose of the committee is to oversee study the state's procurement policy and practices.

At its meeting on November 15, 2005, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2006 session was approved.

Respectfully Submitted,

/s/ Senator Joan Fitz-Gerald
Chairman

TABLE OF CONTENTS

	PAGE
LETTER OF TRANSMITTAL	iii
TABLE OF CONTENTS	v
RECOMMENDED BILLS AND FISCAL NOTES	vii
MEMBERS OF THE COMMITTEE	ix
EXECUTIVE SUMMARY	xi
Committee Charge	xi
Committee Activities	xi
Committee Recommendations	xii
STATUTORY AUTHORITY AND RESPONSIBILITIES	1
COMMITTEE ACTIVITIES	3
State Procurement Practices	3
State Procurement Process — Information Technology Systems	4
Environmentally Preferable Purchasing	5
Other Topics of Discussion	6
SUMMARY OF RECOMMENDATIONS	7
Bill A — Procurement of Information Technology Systems	7
Bill B — Preference for the Purchase of Environmentally Preferable Products by Governmental Entities	7
Bill C — Monitoring of Vendor Performance on State Contracts	7
RESOURCE MATERIALS	9
Meeting Summaries	9
Legislative Council Staff Memoranda and Reports	9

http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2005/05interim.htm

RECOMMENDED BILLS AND FISCAL NOTES

	PAGE
Bill A — Concerning the Procurement of Information Technology Systems	11
— Fiscal Note	19
Bill B — Concerning a Preference for the Purchase of Environmentally Preferable Products by Governmental Entities	23
— Fiscal Note	27
Bill C — Concerning the Monitoring of Vendor Performance on State Contracts, and, in Connection Therewith, Requiring the Submission of Information on the Use of Personal Services and Sole-Source Contracts by State Agencies, Requiring the Existing State Database of Prospective Vendors to Include Information Concerning Vendor Performance, Requiring the Disclosure of State Contract Work to be Performed Outside the State, Establishing Procedures for Monitoring Vendor Performance, and Authorizing the State to Pursue Specified Remedies for Vendor Nonperformance	29
— Fiscal Note	43

INTERIM COMMITTEE TO STUDY THE STATE PROCUREMENT PROCESS

Members of the Committee

Senator Peter Groff
Chair

Senator Deanna Hanna

Senator Dave Owen

Senator Stephanie Takis

Senator Ron Teck

Representative Paul Weissmann
Vice-Chair

Representative Michael Garcia

Representative James Kerr

Representative Larry Liston

Representative Rosemary Marshall

Mr. Steve Adams

Mr. Dave Felice

Mr. Dennis Houlihan

Mr. Mac Terry

Legislative Council Staff

Janis Baron

Principal Fiscal Analyst

Marc Carey

Senior Fiscal Analyst

Amy Larsen
Senior Fiscal Analyst

Office of Legislative Legal Services

Bob Lackner

EXECUTIVE SUMMARY

Committee Charge

Senate Joint Resolution 05-043 established a 14-member interim committee charged with soliciting and accepting reports and considering issues related to those reports on topics including:

- the state's bidding process and contract monitoring process;
- the number of state contracts and the bidding process for state contracts;
- the selection process for state contracts, including information technology (IT) contracts;
- the monitoring process for project performance, including IT contracts;
- ways in which state procurement policies affect the overall economy of the state;
- the contract renewal process;
- procedures pertaining to contract violations or poor performance;
- an examination of other states' procurement policies; and
- any other matter the committee deems to fall within the scope of its study, including offshoring and the disclosure of offshored contracts, the issuance of contracts outside of the bid process, the consideration of factors other than cost in awarding bids, the number of contracts that are outsourced, and the criteria pursuant to which personal services contracts can be entered into.

Committee Activities

The committee met five times during the 2005 interim and discussed several topics. The first meeting was dedicated to an overview of current procurement operations by the Department of Personnel and Administration, an update on performance audits related to statewide contract management practices and specific IT projects by the State Auditor's Office, and a presentation on the economic impact of privatizing, outsourcing and off-shoring state functions. At its subsequent meetings, the committee hoped to hear presentations from a number of state departments and agencies on their contract procedures. Only the Department of State, Colorado State University, and Fort Lewis College made presentations. No agencies of the executive branch testified before the committee aside from those noted herein. The committee did take testimony representing the perspective of vendors and contractors, the use of costing in the procurement process, best value contracting, procurement-related legislation in other states, and recycling incentives in the procurement process in other states.

Committee Recommendations

As a result of committee discussions, the committee recommends three bills for consideration in the 2006 legislative session.

Bill A — Procurement of Information Technology Systems. This bill requires the Office of Innovation and Technology (OIT) to certify that major automation system development projects are in compliance with best practices adopted by the state prior to the approval or disbursement of state or federal funds. Best practices include the assignment of project managers and project management analysts. OIT must establish a team of trained project managers and project management analysts to work with state agencies on major automation system projects, and the state agencies must reimburse OIT for the personnel costs associated with the project management function. Furthermore, each project budget must include funding for at least one project manager and one project management analyst. Project managers and project management analysts who are not assigned by OIT must meet certain qualifications.

Bill B — Preference for Purchase of Environmentally Preferable Products by Governmental Entities. In connection with the purchase of services or supplies, this bill requires a governmental body to award contracts to bidders who offer environmentally preferable products so long as the following criteria are met:

- the quality of the environmentally preferable product is equal to the other products available;
- the product is suitable for the agency's intended use;
- the bidder is able to supply a sufficient quantity of the product; and
- the price does not exceed, or reasonably exceed, the lowest bid price for products that are not environmentally preferable.

The bill requires bidders to provide documentation confirming that their products are environmentally preferable, and governmental entities to report any cost increases associated with purchasing these products to the Joint Budget Committee.

Bill C — Monitoring Vendor Performance on State Contracts. This bill requires the Department of Personnel and Administration to maintain a publicly available, searchable list of all contracts for personal services entered into by state agencies. This list must identify the number of employment positions filled under contract that had previously been performed by classified civil service employees plus other contract details. In addition, the department must identify sole-source contracts and provide an annual report to the Joint Budget Committee on the number, value and justification for the use of sole-source personal services contracts. State agencies must report certain information on personal services contracts to the department including justification for sole-source contracts, substantial changes to contracts, and a post-contract evaluation of vendors.

The current supplier database maintained by the department is expanded to include information allowing the executive director and other purchasing agencies to evaluate a vendor's prior record. If a vendor fails to meet performance measures, the executive director may prohibit the vendor from bidding on future contracts.

Prospective vendors are required to disclose where services will be performed under the contract. If the vendor anticipates that services will be performed outside the United States or Colorado, a statement explaining why is required. If the vendor determines after a contract is awarded that work must be performed outside of the United States or Colorado, the vendor must submit an addendum to its disclosure statement.

The bill requires all contracts with a value of \$100,000 or more to contain performance measures and standards, an accountability section, monitoring requirements specifying how the purchasing agency will evaluate the contractor's performance, methods to resolve vendor noncompliance with performance standards; and provisions allowing access to all vendor records necessary to perform an audit. The purchasing agency must designate at least one person responsible for monitoring vendor performance. Prior to finalizing the contract, that person must certify that the proposed performance measures and standards will provide a valid basis for assessing the vendor's performance. The purchasing agency is required to certify annually whether the vendor is complying with the terms of the contract.

STATUTORY AUTHORITY AND RESPONSIBILITIES

Senate Joint Resolution 05-043 established the interim committee to study the state procurement process. The committee was composed of 14 members appointed jointly by the President of the Senate and the Speaker of the House of Representatives: five from the House of Representatives; five from the Senate; and four from the general public. The resolution required the committee to meet no more than six times during the interim beginning in July 2005 and ending prior to October 15, 2005.

This committee was charged with soliciting and accepting reports and considering issues related to those reports on topics including:

- the state's bidding process and contract monitoring process;
- the number of state contracts and the bidding process for state contracts;
- the selection process for state contracts, including information technology (IT) contracts;
- the monitoring process for project performance, including IT contracts;
- ways in which state procurement policies affect the overall economy of the state;
- the contract renewal process;
- procedures pertaining to contract violations or poor performance;
- an examination of other states' procurement policies; and
- any other matter the committee deems to fall within the scope of its study, including offshoring and the disclosure of offshored contracts, the issuance of contracts outside of the bid process, the consideration of factors other than cost in awarding bids, the number of contracts that are outsourced, and the criteria pursuant to which personal services contracts can be entered into.

COMMITTEE ACTIVITIES

State Procurement Practices

The committee heard testimony about Colorado's procurement system from the Department of Personnel and Administration. Colorado's procurement process is relatively decentralized compared to other states, with most departments having delegated purchasing authority. Departments administered by elected officials (Department of Law, Department of State, and the Department of Treasury) and the Department of Transportation's bridge and highway construction projects are exempt from the state procurement code.

There are three main categories of state purchases: contract awards; price agreements; and purchase orders. The state uses the Bid Information and Distribution System as a clearing house for vendors and agencies to share information and to facilitate state procurement needs. The state has moved away from the lowest bid practice winning the contract award. Instead, other factors, such as the ability to perform, can be used to determine which bid is most advantageous to the state. However, the state as a whole does not track vendor performance. The state's procurement software is designed for legal compliance, not contract management, and Colorado state government does not have a central contract management function.

Recent performance audits. The Office of the State Auditor testified that the contract management evaluation function is a significant area of risk for the state as a result of its delegation to state agencies. A performance audit of statewide contract management practices conducted by Deloitte and Touche, LLP, identified a number of recommendations for improvement including:

- implementing a centralized contract monitoring system;
- developing a centralized monitoring system for contract disputes;
- reviewing the policy to increase delegation of this function to state agencies;
- identifying department noncompliance with procurement rules;
- expanding personal services contract criteria;
- developing performance measures for each contract; and
- evaluating contract monitoring and administration in employee performance evaluations.

Recent audits on private prisons and highway design and construction projects were also discussed, and they too included recommendations on contract monitoring.

Economic impact of privatizing, outsourcing and off-shoring. The committee received testimony from the AFL-CIO cautioning against outsourcing and off-shoring state functions. For example, outsourcing may open the door for poor service quality, corruption, and cost overruns. Off-shoring may lead to higher unemployment, higher dependence on state welfare programs, an increase in the number of defaults on home

mortgages, and lower tax revenue. Additionally, when functions related to personal health data and tax data are off-shored, individuals may lose control of their personal information. It was noted that many states have begun to consider legislation addressing these issues.

Perspective of state vendors and contractors. Representatives of the business community identified five areas that they would like to see addressed: accountability; consistency; oversight; clarity; and transparency. The complexity of Colorado's website makes it difficult for companies to engage in business with the state, especially for small companies. On-line bidding is essential for technology companies. It was suggested that bid response time to lengthened and that bid awards be made in a timely manner.

Committee recommendation. In response to issues raised, the committee recommends Bill C relating to monitoring vendor performance. It requires the Department of Personnel and Administration to maintain a publicly available, searchable list of all contracts for personal services entered into by state agencies. In addition, the department must identify sole-source contracts and provide an annual report to the Joint Budget Committee on the number, value and justification for the use of sole-source personal services contracts. The current supplier database maintained by the department is expanded to include information to allow the executive director and purchasing agencies to evaluate a vendor's prior record. If a vendor fails to meet performance measures, the executive director may prohibit the vendor from bidding on future contracts. Prospective vendors are required to disclose where services will be performed under the contract. If the vendor anticipates that services will be performed outside the United States or Colorado, a statement explaining why is required. Finally, the bill requires all contracts with a value of \$100,000 or more to contain specified components.

State Procurement Process — Information Technology Systems

The committee heard testimony from the Secretary of State's Office on the SCORE project. The goal of this project is to replace all county voter registration systems with one statewide system. While the office is exempt from certain constraints of the state procurement code, the office follows the same procedures most state agencies are required to follow, and several concerns with the process were shared with the committee as follows:

- vendors know how much the agency has to spend because of the state's appropriation process;
- the process is very slow, often taking up to 12 months to finalize a project due to in-house analysis, inclusion in the annual budget submission, Joint Budget Committee staff analysis, and final approval through the annual budget process;
- technology may be obsolete once the project is implemented if the process moves too slowly; and

- comments received from the State Controller or the Attorney General's Office can prove problematic — although both agencies provide good contract language, objections to the contract seem to go beyond the legal review.

The Secretary of State's Office also noted that due to its small staff, the procurement function is split among several employees. Because of the scope of the SCORE project, the office hired a contract manager to provide oversight. The committee expressed concern over the state's ability to effectively manage large IT projects and the need for expert contract services to provide the necessary oversight and monitoring of these projects.

In addition, the committee heard testimony from the State Auditor about recurring problems on large IT projects. For example, a November 2002 audit of Colorado Trails identified numerous problems, delays and increased costs during implementation of the system. Colorado Trails is a \$62 million automated system which manages data related to foster care and adoption services. Similar problems were also found with implementation of the Colorado Benefits Management System (CBMS). Specific audit recommendations for improving large state IT projects included institutionalizing best practices for business process re-engineering, better contract development (defining and requiring deliverables in the IT contract), contract management, and staff training.

The committee had planned to hear testimony on other state IT projects, but the only other agencies that testified before the committee were the Department of Personnel and Administration and two institutions within the Department of Higher Education — Colorado State University and Fort Lewis College.

Committee recommendation. The committee recommends Bill A which requires the OIT to certify that major automation system development projects are in compliance with best practices adopted by the state prior to the approval or disbursement of state or federal funds. The bill also requires that OIT establish a team of trained project managers and analysts to work with state agencies on major automation system projects.

Environmentally Preferable Purchasing

The committee heard testimony from the Colorado Association for Recycling regarding the purchasing policies for environmentally preferred products (EPPs). It was testified that environmentally preferable procurement policies can be the front line of defense against pollution and wasteful practices, resulting in simpler and less costly practices. EPPs can include recycled content products, energy conserving products and less toxic products. Examples of environmentally preferred services include integrated pest management practices rather than pesticide application. The Colorado Association for Recycling noted that Colorado lags behind other states in purchasing EPPs and has no consistent policy in this area.

Committee recommendation. The committee recommends Bill B that requires a governmental body purchasing services or supplies to award contracts to bidders offering EPPs so long as: (1) the quality of the EPP is equal to that of other products available; (2) the EPP is suitable for the agency's intended use; (3) the bidder is able to supply the EPP in sufficient quantity; and (4) the price of the EPP does not exceed, or reasonably exceeds, the lowest bid price for comparable products that are not environmentally preferable.

Other Topics of Discussion

The committee heard additional testimony on procurement issues. A presentation on the use of costing in the procurement process centered on activity-based costing (ABC). ABC assigns costs to products or services based on the consumption of resources and is a process to align revenues and costs to business processes and activities. The committee learned about best value contracting (BVC). BVC is an alternative to low-bid contracting and takes into consideration a bidder's qualifications and past performance in addition to price in awarding contracts. The committee also received an overview of recent procurement related legislation in other states.

SUMMARY OF RECOMMENDATIONS

As a result of the committee's activities, the following bills are recommended to the Colorado General Assembly.

Bill A — Concerning the Procurement of Information Technology Systems

Bill A requires the Office of Innovation and Technology (OIT) to certify that major automation system development projects are in compliance with best practices adopted by the state prior to the approval or disbursement of state or federal funds. The bill defines best practices to include the assignment of project managers and project management analysts. OIT is required to establish a team of trained project managers and project management analysts to work with state agencies on major automation system projects. State agencies are required to reimburse OIT for the personnel costs associated with this project management function. The bill requires that project managers and project management analysts not assigned by OIT must meet certain qualifications. The bill's fiscal impact is estimated at \$250,000 General Fund in FY 2006-07 with the Governor's Office, Office of Innovation and Technology, requiring 3.0 FTE to meet the bill's requirements. Costs for FY 2007-08 are estimated at \$240,000 General Fund and 3.0 FTE.

Bill B — Concerning a Preference for the Purchase of Environmentally Preferable Products by Governmental Entities

Bill B requires a governmental body purchasing services or supplies to award contracts to bidders offering environmentally preferable products (EPPs) so long as: (1) the quality of the EPP is equal to that of other products available; (2) the EPP is suitable for the agency's intended use; (3) the bidder is able to supply the EPP in sufficient quantity; and (4) the price of the EPP does not exceed, or reasonably exceeds, the lowest bid price for comparable products that are not environmentally preferable. This bill requires bidders to provide documentation confirming that their products are environmentally preferable, and establishes reporting requirements. This bill is assessed as having no fiscal impact.

Bill C — Concerning the Monitoring of Vendor Performance on State Contracts

Bill C requires the Department of Personnel and Administration to maintain a publicly available, searchable list of all contracts for personal services entered into by state agencies. In addition, the department must identify sole-source contracts and provide an annual report to the Joint Budget Committee on the number, value and justification for the use of sole-source personal services contracts. The current supplier database maintained by the department is expanded to include information to allow the executive director and

purchasing agencies to evaluate a vendor's prior record. If a vendor fails to meet performance measures, the executive director may prohibit the vendor from bidding on future contracts. Prospective vendors are required to disclose where services will be performed under the contract. If the vendor anticipates that services will be performed outside the United States or Colorado, a statement explaining why is required. Finally, the bill requires all contracts with a value of \$100,000 or more to contain specified components. This bill's fiscal impact is estimated at \$930,000 General Fund and 11.4 FTE in FY 2006-07. Costs for FY 2007-08 are estimated at \$880,000 General Fund and 14.5 FTE.

RESOURCE MATERIALS

The resource materials listed below were provided to the committee or developed by Legislative Council Staff during the course of the meetings. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver, (303-866-2055). For a limited time, the meeting summaries and materials developed by Legislative Council Staff are available on our web site at:

http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2005/05interim.htm

Meeting Summaries	Topics Discussed
August 8, 2005	Overview of current practices and procurement operations; update on performance audits addressing management issues; economic impact of privatizing, outsourcing and off-shoring state functions.
August 9, 2005	Overview of higher education contracts and contracting procedures.
August 22, 2005	Overview of contracts and contracting procedures and SCORE; perspective of state vendors and contractors; the use of costing in the procurement process; best value contracting; perspective of the state controllers office contracting unit.
September 21, 2005	Overview of recent procurement-related legislation in other states; discussion on recycling, incentives and procurement in other states.
October 11, 2005	Finalization of proposed legislation.

Legislative Council Staff Memoranda and Reports

July 19, 2005	Overview of the State Procurement Process
July 26, 2005	Overview of Interim Committee to Study the State Procurement Process
September 21, 2005	State Procurement Legislation in Other States Related to Contract Monitoring, Outsourcing, Off-Shoring and Disclosure

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

Bill A

DRAFT

LLS NO. 06-0185.01 Bob Lackner

SENATE BILL

SENATE SPONSORSHIP

Teck, Groff, and Hanna

HOUSE SPONSORSHIP

Weissmann, Liston, and Marshall

Senate Committees

House Committees

A BILL FOR AN ACT

101 CONCERNING THE PROCUREMENT OF INFORMATION TECHNOLOGY
102 SYSTEMS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Interim Committee to Study the State Procurement Process.
Prior to the approval or disbursement of any moneys for any major automation system development project (project), requires the office of innovation and technology (office) to certify to the state controller that any such project is in compliance with best practices adopted by the state concerning the management of an information technology project. Requires the office to develop policies regarding best practices and the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

certification of project managers and project management analysts.

Requires the department of personnel (department), in collaboration with the office, to create a job category and defined skill sets within the state personnel system for individuals employed as major automation system development project managers and major automation system development project management analysts. Requires the office to establish a team of project managers and project management analysts who shall:

- Satisfy any training and experience requirements as established by the department; and
- Be assigned by the office, in collaboration with the state agencies, to work with any such agencies on a project.

Requires the state agencies to be responsible for reimbursing the office for the personnel costs associated with the project management and project management analyst function. Requires the budget of each project to include funding for at least one project manager and one project management analyst. Authorizes the executive director of any state agency that employs any person who possesses the qualifications necessary to be a project manager or project management analyst to request a review and certification that any such person is in compliance with any personnel qualifications governing such position as adopted by the state agency concerning the management of an information technology project and may use any such qualified staff person for project management and project management analyst services. Consistent with existing rules governing the state personnel system, specifies that no state agency shall be precluded from hiring a contract employee as a full-time project manager or project management analyst if the person satisfies the qualifications specified in the act.

Requires the office to establish and implement a training plan for all persons employed by the state as of the effective date of the act who provide services or functions described in the job descriptions provided by the department for project managers and project management analysts. Permits any employee who receives such training and who possesses sufficient relevant experience to be certified by the office as a project manager or a project management analyst. Allows the office, in collaboration with the department, to require, as part of the certification process created under the act, refresher training as specified in the act.

Requires the state agency to reimburse the office for the costs of providing the training required by the act.

By specified dates, requires the office to submit a plan to the commission on information management and to specified legislative committees. Describes the required contents of the plan.

Defines terms.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 24-37.5-102, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF THE FOLLOWING NEW
4 SUBSECTIONS to read:

5 **24-37.5-102. Definitions.** As used in this article, unless the
6 context otherwise requires:

7 (3.5) "INFORMATION TECHNOLOGY" MEANS THE APPLICATION OF
8 ELECTRONIC INFORMATION PROCESSING HARDWARE, SOFTWARE, OR
9 TELECOMMUNICATIONS TO SUPPORT STATE GOVERNMENT BUSINESS
10 PROCESSES.

11 (3.7) "MAJOR AUTOMATION SYSTEM DEVELOPMENT PROJECT"
12 MEANS A PROJECT OF STATE GOVERNMENT THAT HAS A SIGNIFICANT
13 INFORMATION TECHNOLOGY COMPONENT, INCLUDING, WITHOUT
14 LIMITATION, THE REPLACEMENT OF AN EXISTING TECHNOLOGICAL SYSTEM.
15 FOR PURPOSES OF THIS SUBSECTION (3.7), "SIGNIFICANT" MEANS A LEVEL
16 OF COMPLEXITY SUFFICIENT TO WARRANT THE NEED FOR PROJECT
17 MANAGEMENT AS DEFINED BY THE OFFICE THROUGH RULEMAKING.

18 (4.3) "PROJECT MANAGEMENT ANALYST" MEANS A PERSON WHO
19 IS TRAINED AND EXPERIENCED IN GATHERING PROJECT
20 MANAGEMENT-RELATED INFORMATION AND IN THE ANALYSIS OF PROJECT
21 MANAGEMENT-RELATED INFORMATION. SUCH INFORMATION MAY
22 INCLUDE, WITHOUT LIMITATION, INFORMATION RELATED TO MAJOR
23 AUTOMATION SYSTEM DEVELOPMENT PROJECT SCHEDULING, COST, AND
24 PERFORMANCE. A PROJECT MANAGEMENT ANALYST SHALL BE ABLE TO
25 DEVELOP RECOMMENDATIONS FOR APPROPRIATE CORRECTIVE AND
26 PREVENTATIVE MANAGEMENT ACTION REGARDING MAJOR AUTOMATION
27 SYSTEM DEVELOPMENT PROJECTS.

1 (4.7) "PROJECT MANAGER" MEANS A PERSON WHO IS TRAINED AND
2 EXPERIENCED IN THE LEADERSHIP AND MANAGEMENT OF MAJOR
3 AUTOMATION SYSTEM DEVELOPMENT PROJECTS FROM THE
4 COMMENCEMENT OF SUCH PROJECTS THROUGH THEIR COMPLETION.

5 SECTION 2. 24-37.5-105, Colorado Revised Statutes, is
6 amended BY THE ADDITION OF THE FOLLOWING NEW
7 SUBSECTIONS to read:

8 24-37.5-105. Office - responsibilities. (4) PRIOR TO THE
9 APPROVAL OR DISBURSEMENT OF ANY MONEYS, INCLUDING FROM
10 FEDERAL, STATE, OR CASH FUNDS, FOR ANY MAJOR AUTOMATION SYSTEM
11 DEVELOPMENT PROJECT, THE OFFICE SHALL CERTIFY TO THE STATE
12 CONTROLLER THAT THE PROJECT IS IN COMPLIANCE WITH BEST PRACTICES
13 ADOPTED BY THE STATE CONCERNING THE MANAGEMENT OF AN
14 INFORMATION TECHNOLOGY PROJECT. SUCH BEST PRACTICES SHALL
15 INCLUDE THE ASSIGNMENT OF PROJECT MANAGERS AND PROJECT
16 MANAGEMENT ANALYSTS TO MANAGE THE STATE'S RESOURCES AND
17 RESPONSIBILITIES FOR THE DEVELOPMENT OF MAJOR AUTOMATED
18 SYSTEMS. THE OFFICE SHALL DEVELOP POLICIES REGARDING BEST
19 PRACTICES AND THE CERTIFICATION OF PROJECT MANAGERS AND PROJECT
20 MANAGEMENT ANALYSTS.

21 (5)(a) THE DEPARTMENT OF PERSONNEL, IN COLLABORATION WITH
22 THE OFFICE, SHALL CREATE A JOB CATEGORY AND DEFINED SKILL SETS
23 WITHIN THE STATE PERSONNEL SYSTEM FOR INDIVIDUALS EMPLOYED AS
24 MAJOR AUTOMATION SYSTEM DEVELOPMENT PROJECT MANAGERS AND
25 MAJOR AUTOMATION SYSTEM DEVELOPMENT PROJECT MANAGEMENT
26 ANALYSTS. THE OFFICE SHALL ESTABLISH A TEAM OF PROJECT MANAGERS
27 AND PROJECT MANAGEMENT ANALYSTS WHO SHALL:

1 (I) SATISFY ANY TRAINING AND EXPERIENCE REQUIREMENTS AS
2 ESTABLISHED BY THE DEPARTMENT OF PERSONNEL; AND

3 (II) BE ASSIGNED BY THE OFFICE, IN COLLABORATION WITH STATE
4 AGENCIES, TO WORK WITH ANY SUCH AGENCIES ON A MAJOR AUTOMATION
5 SYSTEM DEVELOPMENT PROJECT.

6 (b) STATE AGENCIES THAT USE THE SERVICES SPECIFIED IN
7 SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (5) SHALL BE
8 RESPONSIBLE FOR REIMBURSING THE OFFICE FOR THE PERSONNEL COSTS
9 ASSOCIATED WITH THE PROJECT MANAGEMENT AND PROJECT
10 MANAGEMENT ANALYST FUNCTION. THE BUDGET OF EACH MAJOR
11 AUTOMATION SYSTEM DEVELOPMENT PROJECT SHALL INCLUDE FUNDING
12 FOR AT LEAST ONE PROJECT MANAGER AND ONE PROJECT MANAGEMENT
13 ANALYST. THE EXECUTIVE DIRECTOR OF ANY STATE AGENCY THAT
14 EMPLOYS ANY PERSON WHO POSSESSES THE QUALIFICATIONS NECESSARY
15 TO BE A PROJECT MANAGER OR PROJECT MANAGEMENT ANALYST MAY
16 REQUEST A REVIEW AND CERTIFICATION THAT ANY SUCH PERSON IS IN
17 COMPLIANCE WITH ANY PERSONNEL QUALIFICATIONS GOVERNING SUCH
18 POSITION AS ADOPTED BY THE DEPARTMENT OF PERSONNEL CONCERNING
19 THE MANAGEMENT OF AN INFORMATION TECHNOLOGY PROJECT AND MAY
20 USE ANY SUCH QUALIFIED STAFF PERSON FOR PROJECT MANAGEMENT AND
21 PROJECT MANAGEMENT ANALYST SERVICES. CONSISTENT WITH EXISTING
22 RULES GOVERNING THE STATE PERSONNEL SYSTEM, NO STATE AGENCY
23 SHALL BE PRECLUDED FROM HIRING A CONTRACT EMPLOYEE AS A
24 FULL-TIME PROJECT MANAGER OR PROJECT MANAGEMENT ANALYST IF THE
25 PERSON SATISFIES THE QUALIFICATIONS SPECIFIED IN PARAGRAPH (a) OF
26 THIS SUBSECTION (5).

27 (c) THE OFFICE SHALL ESTABLISH AND IMPLEMENT A TRAINING

1 PLAN FOR ALL PERSONS EMPLOYED BY THE STATE AS OF THE EFFECTIVE
2 DATE OF THIS SUBSECTION (5) WHO PROVIDE SERVICES OR FUNCTIONS
3 DESCRIBED IN THE JOB DESCRIPTIONS PROVIDED BY THE DEPARTMENT OF
4 PERSONNEL FOR PROJECT MANAGERS AND PROJECT MANAGEMENT
5 ANALYSTS. ANY EMPLOYEE WHO RECEIVES SUCH TRAINING AND WHO
6 POSSESSES SUFFICIENT RELEVANT EXPERIENCE MAY BE CERTIFIED BY THE
7 OFFICE AS A PROJECT MANAGER OR A PROJECT MANAGEMENT ANALYST.
8 THE OFFICE, IN COLLABORATION WITH THE DEPARTMENT, MAY ALSO
9 REQUIRE, AS PART OF THE CERTIFICATION PROCESS CREATED PURSUANT TO
10 PARAGRAPH (b) OF THIS SUBSECTION (5), ANY REFRESHER TRAINING THAT
11 IT DEEMS NECESSARY FOR PROJECT MANAGERS AND PROJECT
12 MANAGEMENT ANALYSTS TO STAY CURRENT WITH TRENDS AFFECTING THE
13 MANAGEMENT OF INFORMATION TECHNOLOGY PROJECTS.

14 (d) STATE AGENCIES SHALL REIMBURSE THE OFFICE FOR THE COSTS
15 OF PROVIDING THE TRAINING REQUIRED BY PARAGRAPH (c) OF THIS
16 SUBSECTION (5).

17 (6) NOT LATER THAN FEBRUARY 1, 2007, AND NO LATER THAN
18 FEBRUARY 1 OF EACH CALENDAR YEAR THEREAFTER, THE OFFICE SHALL
19 SUBMIT A PLAN TO THE COMMISSION ON INFORMATION MANAGEMENT
20 CREATED IN SECTION 24-37.5-201 (2) (a), THE JOINT BUDGET COMMITTEE
21 OF THE GENERAL ASSEMBLY, THE BUSINESS, LABOR, AND TECHNOLOGY
22 COMMITTEE OF THE SENATE AND THE BUSINESS AFFAIRS AND LABOR
23 COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR
24 COMMITTEES, AND EACH LEGISLATIVE COMMITTEE OF REFERENCE OF THE
25 SENATE AND THE HOUSE OF REPRESENTATIVES WITH OVERSIGHT OVER A
26 STATE AGENCY THAT HAS COMMENCED A MAJOR AUTOMATION SYSTEM
27 DEVELOPMENT PROJECT. THE PLAN SHALL DESCRIBE THE COMPLIANCE BY

1 THE OFFICE WITH THE REQUIREMENTS OF SUBSECTIONS (4) AND (5) OF THIS
2 SECTION IN CONNECTION WITH MAJOR AUTOMATION SYSTEM
3 DEVELOPMENT PROJECTS. IN THE PLAN, THE OFFICE SHALL ALSO DESCRIBE
4 ANY SIGNIFICANT AUTOMATION SYSTEM DEVELOPMENT PROJECTS
5 CURRENTLY IN PROGRESS AND THE EXTENT TO WHICH THE PROJECTS
6 IDENTIFIED ARE MEETING THE REQUIREMENTS OF SUBSECTIONS (4) AND (5)
7 OF THIS SECTION FOR THE PRIOR CALENDAR YEAR.

8 **SECTION 3. Applicability.** This act shall apply to major
9 automation system development projects commencing on or after the
10 effective date of this act, and shall apply to major automation system
11 development project managers and analysts hired on or after the effective
12 date of this act.

13 **SECTION 4. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.

*Colorado Legislative Council Staff***STATE
FISCAL IMPACT****Drafting Number:** LLS 06-0185**Date:** December 20, 2005**Prime Sponsor(s):** Sen. Teck
Rep. Weissmann**Bill Status:** Interim Committee on State
Procurement**Fiscal Analyst:** Marc Carey (303 866-4102)**TITLE:** CONCERNING THE PROCUREMENT OF INFORMATION TECHNOLOGY SYSTEMS.

Fiscal Impact Summary		FY 2006/2007	FY 2007/2008
State Revenues General Fund			
State Expenditures General Fund		\$249,281	\$240,266
FTE Position Change		3.0 FTE	3.0 FTE
Effective Date: Upon signature of the Governor.			
Appropriation Summary for FY 2006/2007: Governor's Office, Office of Innovation and Technology, \$249,281 GF and 3.0 FTE			
Local Government Impact: None.			

Summary of Legislation

This bill, recommended by the Interim Committee to Study the Procurement Process, requires that prior to the approval or disbursement of any moneys for any major automation system development project, the Office of Innovation and Technology (OIT) must certify to the State Controller that the project is in compliance with "best practices" concerning management of the information technology project. The bill defines a project as any project with a "significant" information technology component that includes a level of complexity sufficient to warrant the need for project management, as defined by OIT rule. The bill also requires that the OIT develop policies regarding defining best practices and the certification of project managers (PM's) and project management analysts (PMA's).

The bill further requires the Department of Personnel and Administration (DPA), in collaboration with the OIT, to create a job category with a defined skill set in the state personnel system for individuals employed as PM's and PMA's on major automation system development projects. The bill requires the OIT to establish a team of PM's and PMA's to:

- satisfy any training and experience requirements as established by DPA; and
- be assigned by the OIT, in collaboration with the state agencies, to work with agencies on the development of a qualifying project.

Any state agency utilizing a member of the OIT project management team will be responsible for reimbursing the OIT for personnel costs. The budget of each project is required to include funding for at least one PM and one PMA. The bill authorizes the Executive Director of any state agency already employing a person qualified for these positions to request a review and certification from the OIT of that person.

The bill requires the OIT to establish and implement a training plan for all state employees who provide services or functions consistent with the job descriptions of PM's and PMA's. Any employee who receives such training and possesses sufficient relevant experience may be certified by the OIT as qualified for these positions. The bill also allows the OIT, in collaboration with DPA, to require, as part of the certification process, additional refresher training. State agencies utilizing these training services are required to reimburse the OIT for the costs of the training.

Finally, by February 1, 2007, and annually thereafter, the bill requires the OIT to submit a plan to the Commission on Information Management, the Joint Budget Committee and Business Labor & Technology Committees of the General Assembly. This plan describes any qualifying projects currently in progress and the extent to which they are in compliance with the provisions of this act.

State Expenditures

Governor's Office of Innovation and Technology. With regard to major automation system development projects, this bill requires the OIT to:

- promulgate rules regarding the level of complexity that is sufficient to define a "significant" information technology component in a project;
- develop policies regarding "best practices", including the assignment of project managers and project management analysts to manage the state's project resources;
- establish a team of PM's and PMA's to be available for assignment to agencies to work on projects; and
- certify to the State Controller that a project is in compliance with "best practices";

The OIT will incur increased costs in the amount of \$249,281 in FY 2006-07 and \$240,266 in FY 2007-08 associated with establishing a team of PM's and PMA's for assignment to agencies as needed. As summarized in Table 1, these totals are based on the following assumptions:

- the position of PM will have a salary similar to an IT Professional VI;
- the position of a PMA will have a salary similar to an IT Professional V;
- the OIT will maintain a team of two in each position;

- the OIT currently employs one FTE equivalent to a PM;
- the required promulgation of rules and development of policies can be done within existing resources; and
- the required project certification to the State Controller may be done within existing resources.

Table 1: Additional Expenses at the Office of Innovation and Technology		
	FY 2006/07	FY 2007/08
Personal Services		
IT Professional IV (1.0 FTE)	\$73,152	\$73,152
IT Professional III (2.0 FTE)	139,368	139,368
PERA/Medicare	26,246	26,246
Subtotal	\$238,766	\$238,766
Operating Expenses		
Capital Outlay	\$6,063	
IT Expenses	2,952	
Operating Costs	1,500	\$1,500
Subtotal	\$10,515	\$1,500
Total Expenses (3.0 FTE)	\$249,281	\$240,266

State Agencies. The bill requires the budget for any qualifying IT project to include funding for one PM and one PMA. The actual costs for individual agencies to comply with this bill will depend upon the number of IT projects that qualify as having a "significant" information technology component, and which agencies are involved, given the OIT rules. While rules have not yet been developed, this fiscal note assumes that the rules will, at a minimum include evaluative criteria such as project cost, time required for project development, and anticipated risk level, thereby restricting the scope of this bill to only a few of the state's largest and most risky IT projects.

A second factor influencing cost to agencies will be the funding source for the project. Many (though not all) of these projects are funded entirely with federal monies. Regardless of the funding source, however, compliance with this bill's provisions means that less money will initially be available for project implementation. If this bill improves project management, however, in the long run the state may realize a reduction in overall project expenditures. Such potential savings have not been quantified.

State Appropriations

The Governor's Office, Office of Innovation and Technology, will require an appropriation in the amount of \$249,281 General Fund and 3.0 FTE in FY 2006-07 to implement this bill.

Departments Contacted

All Departments

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

Bill B

DRAFT

LLS NO. 06-0186.01 Bob Lackner

HOUSE BILL

HOUSE SPONSORSHIP

Weissmann, Garcia, and Marshall

SENATE SPONSORSHIP

Hanna, Groff, and Takis

House Committees

Senate Committees

A BILL FOR AN ACT

101 CONCERNING A PREFERENCE FOR THE PURCHASE OF
102 ENVIRONMENTALLY PREFERABLE PRODUCTS BY
103 GOVERNMENTAL ENTITIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Interim Committee to Study the State Procurement Process.
In connection with the purchase of services or supplies, requires a governmental body to award the contract to a bidder who is able to offer environmentally preferable products subject to the conditions specified in the act.

Specifies that the preference created in the act shall apply only if

Shading denotes HOUSE amendment; Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

the following conditions are met:

- The quality of the environmentally preferable products is equal to the quality of products made available by any other bidder that are not environmentally preferable;
- The environmentally preferable products made available for use are suitable for the use required by the purchasing entity;
- Any bidder able to offer the use of environmentally preferable products is able to supply such products in sufficient quantity, as indicated in the invitation for bids; and
- The bid or quoted price for environmentally preferable products does not exceed the lowest bid or quoted price for products that are not environmentally preferable, or the bid or quoted price for environmentally preferable products reasonably exceeds the lowest bid or quoted price for products that are not environmentally preferable.

Requires a bidder that seeks to qualify for the preference created by the act to certify to the governmental body inviting the bid and provide documentation confirming that the bidder's products are environmentally preferable. Permits the governmental body to rely in good faith on such certification and documentation.

Requires a governmental body to report to the joint budget committee of the general assembly any cost increases associated with the provisions of the act during the previous fiscal year.

Defines terms.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Part 2 of article 103 of title 24, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **24-103-207.5. Purchasing preference for environmentally**
6 **preferable products - definitions.** (1) AS USED IN THIS SECTION, UNLESS
7 THE CONTEXT OTHERWISE REQUIRES, "ENVIRONMENTALLY PREFERABLE
8 PRODUCTS" MEANS SERVICES OR SUPPLIES THAT HAVE A LESSER OR
9 REDUCED EFFECT ON HUMAN HEALTH AND THE ENVIRONMENT WHEN
10 COMPARED WITH COMPETING SERVICES OR SUPPLIES THAT SERVE THE

1 SAME PURPOSE.

2 (2) IN CONNECTION WITH THE PURCHASE OF SERVICES OR SUPPLIES,
3 A GOVERNMENTAL BODY SHALL AWARD THE CONTRACT TO A BIDDER WHO
4 IS ABLE TO OFFER ENVIRONMENTALLY PREFERABLE PRODUCTS SUBJECT TO
5 THE CONDITIONS SPECIFIED IN SUBSECTION (3) OF THIS SECTION.

6 (3) THE PREFERENCE SPECIFIED IN SUBSECTION (2) OF THIS SECTION
7 SHALL APPLY ONLY IF THE FOLLOWING CONDITIONS ARE MET:

8 (a) THE QUALITY OF THE ENVIRONMENTALLY PREFERABLE
9 PRODUCTS IS EQUAL TO THE QUALITY OF PRODUCTS MADE AVAILABLE BY
10 ANY OTHER BIDDER THAT ARE NOT ENVIRONMENTALLY PREFERABLE.

11 (b) THE ENVIRONMENTALLY PREFERABLE PRODUCTS ARE SUITABLE
12 FOR THE USE REQUIRED BY THE PURCHASING ENTITY.

13 (c) ANY BIDDER ABLE TO OFFER ENVIRONMENTALLY PREFERABLE
14 PRODUCTS IS ABLE TO SUPPLY SUCH PRODUCTS IN SUFFICIENT QUANTITY,
15 AS INDICATED IN THE INVITATION FOR BIDS.

16 (d) (I) THE BID OR QUOTED PRICE FOR ENVIRONMENTALLY
17 PREFERABLE PRODUCTS DOES NOT EXCEED THE LOWEST BID OR QUOTED
18 PRICE FOR PRODUCTS THAT ARE NOT ENVIRONMENTALLY PREFERABLE, OR
19 THE BID OR QUOTED PRICE FOR ENVIRONMENTALLY PREFERABLE
20 PRODUCTS REASONABLY EXCEEDS THE LOWEST BID OR QUOTED PRICE FOR
21 PRODUCTS THAT ARE NOT ENVIRONMENTALLY PREFERABLE.

22 (II) FOR PURPOSES OF THIS PARAGRAPH (d), A BID OR QUOTED
23 PRICE REASONABLY EXCEEDS THE LOWEST BID OR QUOTED PRICE WHEN
24 THE HEAD OF THE GOVERNMENTAL BODY OR OTHER PUBLIC OFFICER
25 CHARGED BY LAW WITH THE DUTY TO PURCHASE SUCH PRODUCTS, AT HIS
26 OR HER SOLE DISCRETION, DETERMINES THE HIGHER BID TO BE
27 REASONABLE AND CAPABLE OF BEING PAID OUT OF THAT GOVERNMENTAL

1 BODY'S EXISTING BUDGET WITHOUT ANY FURTHER SUPPLEMENTAL OR
2 ADDITIONAL APPROPRIATION.

3 (4) A BIDDER THAT SEEKS TO QUALIFY FOR THE PREFERENCE
4 CREATED BY SUBSECTION (2) OF THIS SECTION SHALL CERTIFY TO THE
5 GOVERNMENTAL BODY INVITING THE BID AND PROVIDE DOCUMENTATION
6 CONFIRMING THAT THE BIDDER'S PRODUCTS ARE ENVIRONMENTALLY
7 PREFERABLE. THE GOVERNMENTAL BODY MAY RELY IN GOOD FAITH ON
8 SUCH CERTIFICATION AND DOCUMENTATION.

9 (5) A GOVERNMENTAL BODY SHALL REPORT TO THE JOINT BUDGET
10 COMMITTEE OF THE GENERAL ASSEMBLY ANY COST INCREASES
11 ASSOCIATED WITH THE PROVISIONS OF THIS SECTION DURING THE
12 PREVIOUS FISCAL YEAR.

13 **SECTION 2. Effective date - applicability.** (1) This act shall
14 take effect at 12:01 a.m. on the day following the expiration of the
15 ninety-day period after final adjournment of the general assembly that is
16 allowed for submitting a referendum petition pursuant to article V,
17 section 1 (3) of the state constitution (August 9, 2006, if adjournment sine
18 die is on May 10, 2006); except that, if a referendum petition is filed
19 against this act or an item, section, or part of this act within such period,
20 then the act, item, section, or part, if approved by the people, shall take
21 effect on the date of the official declaration of the vote thereon by
22 proclamation of the governor.

23 (2) The provisions of this act shall apply to bids for contracts
24 solicited on or after the applicable effective date of this act.

DRAFT

Bill B

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 06-0186

Date: December 12, 2005

Prime Sponsor(s): Rep. Weissmann
Sen. Hanna

Bill Status: Interim Committee on State
Procurement

Fiscal Analyst: Marc Carey (303 866-4102)

TITLE: CONCERNING A PREFERENCE FOR THE PURCHASE OF ENVIRONMENTALLY
PREFERABLE PRODUCTS BY GOVERNMENTAL ENTITIES.

Summary of Assessment

This bill, recommended by the Interim Committee to Study the State Procurement Process, requires that governmental bodies, when purchasing supplies or services, award contracts to bidders that offer "environmentally preferable products" (EPP), subject to the following conditions:

- the quality of the EPP is equal to the quality of other products that are not environmentally preferable;
- the EPP is suitable for the required use of the purchasing entity;
- the EPP can be supplied in sufficient quantity;
- the EPP bid either does not exceed or "reasonably exceeds" the lowest bid quoted for products that are not environmentally preferable; and
- "reasonably exceeds" is defined as instances when the head of the governmental body determines the higher bid to be "reasonable" and capable of being paid from that agency's existing budget without additional or supplemental appropriations.

The bill specifies that a bidder seeking to qualify for an EPP preference is required to certify and provide documentation that the products are environmentally preferable. Finally, the bill requires a governmental body to annually report to the Joint Budget Committee any cost increases that occur as a result of this act during the previous fiscal year.

Contracts for Environmentally Preferable Products. This fiscal note assumes that some departments may determine that the price quoted by bidders offering EPPs "reasonably exceeds" the lowest bid submitted for products that are not environmentally preferable. Should that occur, that department would pay more than it would otherwise, and there would be an expenditure increase. However, the bill requires those charged with purchasing EPPs to determine that such purchases are capable of being paid out of existing appropriations. This fiscal note assumes that agencies will operate within existing resources when purchasing EPPs or choose not to purchase them. Thus, the bill does not affect state revenues or expenditures and is assessed as having no fiscal impact.

Departments Contacted

All Departments

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

Bill C

DRAFT

LLS NO. 06-0187.01 Bob Lackner

SENATE BILL

SENATE SPONSORSHIP

Groff, and Hanna

HOUSE SPONSORSHIP

Garcia, Marshall, and Weissmann

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE MONITORING OF VENDOR PERFORMANCE ON STATE**
102 **CONTRACTS, AND, IN CONNECTION THEREWITH, REQUIRING THE**
103 **SUBMISSION OF INFORMATION ON THE USE OF PERSONAL**
104 **SERVICES AND SOLE-SOURCE CONTRACTS BY STATE AGENCIES,**
105 **REQUIRING THE EXISTING STATE DATABASE OF PROSPECTIVE**
106 **VENDORS TO INCLUDE INFORMATION CONCERNING VENDOR**
107 **PERFORMANCE, REQUIRING THE DISCLOSURE OF STATE**
108 **CONTRACT WORK TO BE PERFORMED OUTSIDE THE STATE,**
109 **ESTABLISHING PROCEDURES FOR MONITORING VENDOR**
110 **PERFORMANCE, AND AUTHORIZING THE STATE TO PURSUE**
111 **SPECIFIED REMEDIES FOR VENDOR NONPERFORMANCE.**

Bill Summary

*Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Interim Committee to Study the State Procurement Process.

Requires the department of personnel (department) to maintain a publicly available list, accessible from the website maintained by the state, of all contracts for personal services entered into by state agencies during each fiscal year. Requires information maintained on the website to be searchable by specified criteria. Specifies information the list is required to contain.

Requires the department to ensure that the accounting definitions and procedures contained in any contracts for personal services entered into on or after the effective date of the act are consistent with the definitions and procedures contained in the state procurement code. Requires information concerning expenditures by state agency and by type of service to be included in the list required to be maintained by the department pursuant to the act.

With respect to any sole-source contracts identified in the list required to be maintained by the department pursuant to the act, not later than a specified date and yearly thereafter, requires the department to submit a report to the joint budget committee concerning any such contracts added to the list during the prior calendar year. Specifies the required contents of the report.

Requires any sole-source contract entered into by a state agency to be filed with the department and made available for inspection at the office of the department for a specified period prior to the starting date of the contract. At the time the contract is filed, requires the agency to submit to the department its documented justification for the use of the sole-source contract.

Requires any state agency that has entered into or renewed a personal services contract or a client service contract during a particular calendar year, on or before a specified date, to provide the department with a report describing the procedures the agency employed in entering into, renewing, and managing the contract.

Upon the completion of each personal services contract, requires the state agency that was a party to the contract to perform a post-contract evaluation of the vendor that performed the contract. Specifies required contents of the evaluation.

Requires the existing state database of prospective contract vendors to include such information as will allow the executive director of the department and purchasing agencies to evaluate the prior record of a particular vendor in meeting performance measures and standards under the act in connection with a contract to which it has been a party. In the

event a particular vendor demonstrates a gross failure to meet such performance measures and standards in connection with one or more contracts to which it has been a party, authorizes the executive director, in the exercise of his or her discretion, to remove the name of such vendor from the database and to prohibit the vendor from bidding on future contracts. Authorizes the executive director to reinstate the vendor on a showing of good cause.

Prior to contracting or as a requirement for the solicitation of any contracts from the state for services, as appropriate, requires any prospective vendor to disclose in a statement of work where services will be performed under the contract, including any subcontracts, and whether any services under the contract or any subcontracts are anticipated to be performed outside the United States or Colorado. If the prospective vendor anticipates services under the contract or any subcontracts will be performed outside the United States or Colorado, requires the vendor to provide in its statement of work a provision setting forth why it is necessary to go outside the United States or Colorado to perform the contract or any subcontracts. Requires the vendor to submit an addendum to the statement of work if the vendor determines, after performance of the contract has begun, that fulfillment of its obligations necessitates that services be performed outside of the United States or Colorado.

Requires each contract entered into pursuant to the state procurement code with a value that exceeds a specified amount to contain:

- Performance measures and standards developed by the purchasing agency specifically for the contract;
- An accountability section that requires the vendor to report regularly on its achievement of the performance measures and standards specified in the contract;
- Monitoring requirements that specify how the purchasing agency will evaluate the contractor's performance, including progress reports, site visits, inspections, and reviews of performance data;
- Methods and mechanisms to resolve any situation in which the purchasing agency's monitoring assessment determines noncompliance, which mechanism may include termination of the contract; and
- Provisions that provide access to all vendor records necessary to undertake a properly authorized audit, examination, or investigation.

Requires each purchasing agency to designate one person within the agency responsible for monitoring whether the required elements of the contract as specified in the act have been met. In the alternative to designating one person from within the agency, authorizes the agency to use staff members from the office of the state controller or the attorney

general's office for such purposes.

Requires the person selected for contract monitoring to certify that the proposed performance measures and standards, data sources, and data collection methods provide a valid basis for assessing the vendor's performance before a purchasing agency may enter into a contract.

Requires the purchasing agency to annually certify whether the vendor on any contract is complying with the terms of the contract. If the agency determines that the vendor has not complied with the contract terms including, but not limited to, performance standards and measurable outcomes, entitles the state to any remedy available under law in the case of contract nonperformance including, but not limited to, termination of the contract and the return of any and all payments made to the vendor by the state under the contract.

Defines a term. Makes a legislative declaration.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 24-50-510, Colorado Revised Statutes, is amended
3 to read:

4 **24-50-510. Annual report of contracts - legislative declaration**

5 **- definitions.** (1) IN ENACTING SUBSECTIONS (4) TO (7) OF THIS SECTION,
6 THE GENERAL ASSEMBLY INTENDS TO ESTABLISH A POLICY OF OPEN
7 COMPETITION FOR PERSONAL SERVICES CONTRACTS UNLESS THE
8 COMPETITION IS SPECIFICALLY EXEMPTED UNDER THIS SECTION. IN
9 ENACTING SUBSECTIONS (4) TO (7) OF THIS SECTION, THE GENERAL
10 ASSEMBLY FURTHER INTENDS TO PROVIDE FOR LEGISLATIVE AND
11 EXECUTIVE REVIEW OF ALL PERSONAL SERVICES CONTRACTS ENTERED
12 INTO BY STATE AGENCIES, TO CENTRALIZE THE LOCATION OF INFORMATION
13 ABOUT PERSONAL SERVICES CONTRACTS FOR THE PURPOSE OF
14 FACILITATING PUBLIC REVIEW OF SUCH CONTRACTS, AND TO ENSURE THE
15 PROPER ACCOUNTING OF EXPENDITURES FOR PERSONAL SERVICES.

16 (2) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT
17 OTHERWISE REQUIRES, "DEPARTMENT" MEANS THE DEPARTMENT OF

1 PERSONNEL CREATED IN SECTION 24-50-102 (1).

2 (3) Using forms supplied by the state personnel director, every
3 state agency shall submit to the state personnel director a report no later
4 than September 30 of each year setting forth the types and dollar values
5 of contracts for services approved during the preceding fiscal year. Such
6 report shall include information on any changes to the types or number of
7 classified positions in the state agency as a direct result of contracts
8 entered into by the agency. As used in this section, "state agency" means
9 every board, bureau, commission, department, institution, division, or
10 section of state government, including institutions of higher education.

11 (4) (a) ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (4),
12 THE DEPARTMENT SHALL MAINTAIN A PUBLICLY AVAILABLE LIST,
13 ACCESSIBLE FROM THE WEBSITE MAINTAINED BY THE STATE, OF ALL
14 CONTRACTS FOR PERSONAL SERVICES ENTERED INTO BY STATE AGENCIES
15 DURING EACH FISCAL YEAR. INFORMATION CONCERNING CONTRACTS
16 MAINTAINED ON THE WEBSITE SHALL BE SEARCHABLE BY CRITERIA SUCH
17 AS THE NAME OF THE AGENCY THAT HAS ENTERED INTO THE CONTRACT,
18 THE DOLLAR AMOUNT OF THE CONTRACT, AND THE NATURE OF THE
19 CONTRACT. THE LIST SHALL IDENTIFY, WITHOUT LIMITATION, THE
20 FOLLOWING:

21 (I) THE STATE AGENCY THAT HAS ENTERED INTO THE PERSONAL
22 SERVICES CONTRACT;

23 (II) THE PERSONS OR ENTITIES WITH WHICH THE STATE AGENCY IS
24 CONTRACTING;

25 (III) THE DURATION OF EMPLOYMENT OF ANY SPECIAL PERSONAL
26 SERVICES EMPLOYEES THAT HAVE BEEN PLACED ON THE STATE PAYROLL
27 AS A RESULT OF ANY PERSONAL SERVICES CONTRACT;

1 (IV) THE PURPOSE OF THE PERSONAL SERVICES CONTRACT;
2 (V) THE EFFECTIVE DATES AND PERIODS OF PERFORMANCE OF THE
3 PERSONAL SERVICES CONTRACT;
4 (VI) THE NUMBER OF TIMES THE PERSONAL SERVICES CONTRACT
5 HAS BEEN RENEWED; AND
6 (VII) WHETHER THE PERSONAL SERVICES CONTRACT WAS
7 COMPETITIVELY PROCURED OR AWARDED ON A SOLE-SOURCE BASIS.
8 (b) THE LIST REQUIRED TO BE MAINTAINED BY THE DEPARTMENT
9 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4) SHALL ALSO
10 IDENTIFY THE NUMBER OF EMPLOYMENT POSITIONS TO BE FILLED UNDER
11 ANY PERSONAL SERVICES CONTRACT THAT HAD PREVIOUSLY BEEN
12 PERFORMED BY CLASSIFIED CIVIL SERVICE EMPLOYEES, IN ADDITION TO
13 THE TOTAL NUMBER OF POSITIONS, IF ANY, ELIMINATED BY THE CONTRACT;
14 THE PROVISIONS, IF ANY, MADE FOR REEMPLOYMENT OF SUCH DISPLACED
15 EMPLOYEES; AND THE COST SAVINGS, IF ANY, REALIZED BY THE STATE AS
16 A RESULT OF THE CONTRACT.
17 (5) (a) THE DEPARTMENT SHALL ENSURE THAT THE ACCOUNTING
18 DEFINITIONS AND PROCEDURES CONTAINED IN ANY CONTRACTS FOR
19 PERSONAL SERVICES ENTERED INTO ON OR AFTER THE EFFECTIVE DATE OF
20 THIS SUBSECTION (5) ARE CONSISTENT WITH THE DEFINITIONS AND
21 PROCEDURES CONTAINED IN ARTICLES 101 TO 112 OF THIS TITLE. THE LIST
22 REQUIRED TO BE MAINTAINED BY THE DEPARTMENT PURSUANT TO
23 PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION SHALL INCLUDE
24 INFORMATION CONCERNING PERSONAL SERVICES EXPENDITURES BY STATE
25 AGENCY AND BY TYPE OF SERVICE. THE TYPE OF SERVICES THAT MAY BE
26 DESIGNATED SHALL INCLUDE, WITHOUT LIMITATION, MANAGEMENT AND
27 ORGANIZATIONAL SERVICES, LEGAL AND EXPERT WITNESS SERVICES,

1 FINANCIAL SERVICES, COMPUTER AND INFORMATIONAL SERVICES, SOCIAL
2 OR TECHNICAL RESEARCH SERVICES, MARKETING SERVICES,
3 COMMUNICATIONS SERVICES, AND EMPLOYEE TRAINING OR RECRUITING
4 SERVICES.

5 (b) WITH RESPECT TO ANY SOLE-SOURCE CONTRACTS IDENTIFIED
6 IN THE LIST REQUIRED TO BE MAINTAINED BY THE DEPARTMENT PURSUANT
7 TO PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION, NOT LATER THAN
8 FEBRUARY 1, 2007, AND NO LATER THAN FEBRUARY 1 OF EACH CALENDAR
9 YEAR THEREAFTER, THE DEPARTMENT SHALL SUBMIT A REPORT TO THE
10 JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY CONCERNING ANY
11 CONTRACTS ADDED TO THE LIST DURING THE PRIOR CALENDAR YEAR.
12 EACH REPORT SHALL DESCRIBE, WITHOUT LIMITATION, THE FOLLOWING:

13 (I) THE NUMBER AND AGGREGATE VALUE OF THE SOLE-SOURCE
14 CONTRACTS FOR EACH CATEGORY OF SERVICES SPECIFIED IN PARAGRAPH
15 (a) OF THIS SUBSECTION (5);

16 (II) THE NUMBER AND AGGREGATE VALUE OF ALL SOLE-SOURCE
17 CONTRACTS WITH A VALUE OF _____ OR MORE DOLLARS;

18 (III) THE NUMBER AND AGGREGATE VALUE OF ALL SOLE-SOURCE
19 CONTRACTS WITH A VALUE OF LESS THAN _____ DOLLARS;

20 (IV) THE JUSTIFICATION PROVIDED BY THE AGENCY FOR THE USE
21 OF THE SOLE-SOURCE CONTRACT; AND

22 (V) ANY CHANGES IN THE USE OF SOLE-SOURCE CONTRACTS BY
23 THE AGENCY SINCE THE LAST REPORT SUBMITTED BY THE DEPARTMENT.

24 (c) THE DEPARTMENT SHALL ADD ANY SOLE-SOURCE CONTRACT TO
25 THE LIST MAINTAINED BY THE DEPARTMENT PURSUANT TO PARAGRAPH (a)
26 OF SUBSECTION (4) OF THIS SECTION WITHIN THIRTY DAYS AFTER THE
27 EXECUTION OF THE CONTRACT.

1 (6) ANY SOLE-SOURCE CONTRACT ENTERED INTO BY A STATE
2 AGENCY SHALL BE FILED WITH THE DEPARTMENT AND BE MADE AVAILABLE
3 FOR INSPECTION AT THE OFFICE OF THE DEPARTMENT AT LEAST TEN
4 BUSINESS DAYS PRIOR TO THE STARTING DATE OF THE SOLE-SOURCE
5 CONTRACT AS SPECIFIED IN THE CONTRACT. AT THE TIME THE CONTRACT
6 IS FILED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBSECTION
7 (6), THE AGENCY SHALL SUBMIT TO THE DEPARTMENT ITS DOCUMENTED
8 JUSTIFICATION FOR THE USE OF THE CONTRACT. IN THE CASE OF ANY
9 CONTRACT WITH A VALUE OF TWENTY THOUSAND OR MORE DOLLARS,
10 DOCUMENTED JUSTIFICATION FOR PURPOSES OF THIS SUBSECTION (6)
11 SHALL INCLUDE EVIDENCE THAT THE AGENCY ATTEMPTED TO IDENTIFY
12 POTENTIAL CONSULTANTS.

13 (7)(a) ANY STATE AGENCY THAT HAS ENTERED INTO OR RENEWED
14 A PERSONAL SERVICES CONTRACT OR A CLIENT SERVICE CONTRACT
15 DURING A PARTICULAR CALENDAR YEAR, SHALL, ON OR BEFORE JANUARY
16 1 OF THE FOLLOWING CALENDAR YEAR, PROVIDE THE DEPARTMENT WITH
17 A REPORT DESCRIBING THE PROCEDURES THE AGENCY EMPLOYED IN
18 ENTERING INTO, RENEWING, AND MANAGING THE CONTRACT. THE REPORT
19 REQUIRED BY THIS PARAGRAPH (a) SHALL ALSO ADDRESS SUBSTANTIAL
20 CHANGES IN EITHER THE SCOPE OF THE WORK SPECIFIED IN THE CONTRACT
21 OR IN THE SCOPE OF THE WORK SPECIFIED IN THE FORMAL SOLICITATION
22 DOCUMENT.

23 (b) UPON THE COMPLETION OF EACH PERSONAL SERVICES
24 CONTRACT, THE STATE AGENCY THAT WAS A PARTY TO THE CONTRACT
25 SHALL PERFORM A POST-CONTRACT EVALUATION OF THE VENDOR THAT
26 PERFORMED THE CONTRACT. THE EVALUATION SHALL, WITHOUT
27 LIMITATION, MEASURE THE PERFORMANCE OF THE VENDOR IN MEETING

1 CONTRACTUAL REQUIREMENTS RELATING TO QUALITY, COST, AND
2 DEADLINES. THE EVALUATION SHALL BE INCLUDED IN THE REPORT
3 REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (7).

4 **SECTION 2.** 24-102-202.5, Colorado Revised Statutes, is
5 amended BY THE ADDITION OF A NEW SUBSECTION to read:

6 **24-102-202.5. Supplier database - cash fund.** (1.5) THE
7 DATABASE REQUIRED BY SUBSECTION (1) OF THIS SECTION SHALL INCLUDE
8 SUCH INFORMATION AS WILL ALLOW THE EXECUTIVE DIRECTOR AND
9 PURCHASING AGENCIES TO EVALUATE THE PRIOR RECORD OF A
10 PARTICULAR VENDOR IN MEETING PERFORMANCE MEASURES AND
11 STANDARDS UNDER SECTION 24-103.5-101 IN CONNECTION WITH A
12 CONTRACT TO WHICH IT HAS BEEN A PARTY. IN THE EVENT A PARTICULAR
13 VENDOR DEMONSTRATES A GROSS FAILURE TO MEET SUCH PERFORMANCE
14 MEASURES AND STANDARDS IN CONNECTION WITH ONE OR MORE
15 CONTRACTS TO WHICH IT HAS BEEN A PARTY, THE EXECUTIVE DIRECTOR,
16 IN THE EXERCISE OF HIS OR HER DISCRETION, MAY REMOVE THE NAME OF
17 THE VENDOR FROM THE DATABASE AND PROHIBIT THE VENDOR FROM
18 BIDDING ON FUTURE CONTRACTS. UPON A SHOWING OF GOOD CAUSE, THE
19 EXECUTIVE DIRECTOR MAY REINSTATE THE NAME OF THE VENDOR TO THE
20 DATABASE.

21 **SECTION 3.** Part 2 of article 102 of title 24, Colorado Revised
22 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
23 read:

24 **24-102-205. Contract performance outside the United States**
25 **or Colorado.** (1) PRIOR TO CONTRACTING OR AS A REQUIREMENT FOR
26 THE SOLICITATION OF ANY CONTRACT FROM THE STATE FOR SERVICES, AS
27 APPROPRIATE, ANY PROSPECTIVE VENDOR SHALL DISCLOSE IN A

1 STATEMENT OF WORK WHERE SERVICES WILL BE PERFORMED UNDER THE
2 CONTRACT, INCLUDING ANY SUBCONTRACTS, AND WHETHER ANY SERVICES
3 UNDER THE CONTRACT OR ANY SUBCONTRACTS ARE ANTICIPATED TO BE
4 PERFORMED OUTSIDE THE UNITED STATES OR COLORADO. IF THE
5 PROSPECTIVE VENDOR ANTICIPATES SERVICES UNDER THE CONTRACT OR
6 ANY SUBCONTRACTS WILL BE PERFORMED OUTSIDE THE UNITED STATES
7 OR COLORADO, THE VENDOR SHALL PROVIDE IN ITS STATEMENT OF WORK
8 A PROVISION SETTING FORTH WHY IT IS NECESSARY TO GO OUTSIDE THE
9 UNITED STATES OR COLORADO TO PERFORM THE CONTRACT OR ANY
10 SUBCONTRACTS.

11 (2) IF A PARTICULAR VENDOR DETERMINES, AFTER THE VENDOR
12 HAS BEGUN TO PERFORM UNDER A CONTRACT DESCRIBED IN SUBSECTION
13 (1) OF THIS SECTION, THAT FULFILLMENT OF ITS OBLIGATIONS UNDER THE
14 CONTRACT, OR ANY SUBCONTRACTS, NECESSITATES THAT SERVICES BE
15 PERFORMED OUTSIDE THE UNITED STATES OR COLORADO, THE VENDOR
16 SHALL SUBMIT AN ADDENDUM TO THE STATEMENT OF WORK SUBMITTED
17 IN ACCORDANCE WITH THE REQUIREMENTS OF SUBSECTION (1) OF THIS
18 SECTION. IN THE ADDENDUM, THE VENDOR SHALL PROVIDE A PROVISION
19 SETTING FORTH WHY IT IS NECESSARY TO GO OUTSIDE THE UNITED STATES
20 OR COLORADO TO PERFORM THE CONTRACT OR ANY SUBCONTRACTS.

21 **SECTION 4.** Title 24, Colorado Revised Statutes, is amended BY
22 THE ADDITION OF A NEW ARTICLE to read:

23 **ARTICLE 103.5**

24 **Contract Performance**

25 **24-103.5-101. Monitoring of vendor performance.** (1) EACH
26 CONTRACT ENTERED INTO PURSUANT TO THIS CODE WITH A VALUE OF ONE
27 HUNDRED THOUSAND OR MORE DOLLARS SHALL CONTAIN:

1 (a) PERFORMANCE MEASURES AND STANDARDS DEVELOPED BY THE
2 PURCHASING AGENCY SPECIFICALLY FOR THE CONTRACT. THE MEASURES
3 AND STANDARDS SHALL BE USED BY THE AGENCY TO EVALUATE THE
4 SERVICES PROVIDED TO THE AGENCY AND THE OUTCOMES RESULTING
5 FROM THOSE SERVICES.

6 (b) AN ACCOUNTABILITY SECTION THAT REQUIRES THE VENDOR TO
7 REPORT REGULARLY ON ITS ACHIEVEMENT OF THE PERFORMANCE
8 MEASURES AND STANDARDS SPECIFIED IN THE CONTRACT AND THAT
9 ALLOWS THE PURCHASING AGENCY TO WITHHOLD PAYMENT UNTIL
10 SUCCESSFUL COMPLETION OF ALL OR PART OF THE CONTRACT AND THE
11 ACHIEVEMENT OF ESTABLISHED PERFORMANCE STANDARDS;

12 (c) MONITORING REQUIREMENTS THAT SPECIFY HOW THE
13 PURCHASING AGENCY WILL EVALUATE THE CONTRACTOR'S PERFORMANCE,
14 INCLUDING PROGRESS REPORTS, SITE VISITS, INSPECTIONS, AND REVIEWS
15 OF PERFORMANCE DATA. THE AGENCY SHALL USE ONE OR MORE
16 MONITORING SYSTEMS TO ENSURE THAT THE RESULTS, OBJECTIVES, AND
17 OBLIGATIONS OF THE CONTRACT ARE MET. MONITORING BY THE AGENCY
18 SHALL FOCUS ON THE ACHIEVEMENT OF DESIRED RESULTS OR OBJECTIVES
19 AND NOT ON THE METHODS USED BY THE VENDOR TO ACHIEVE THE
20 RESULTS OR OUTCOMES.

21 (d) METHODS AND MECHANISMS TO RESOLVE ANY SITUATION IN
22 WHICH THE PURCHASING AGENCY'S MONITORING ASSESSMENT DETERMINES
23 NONCOMPLIANCE, WHICH MECHANISMS SHALL INCLUDE TERMINATION OF
24 THE CONTRACT; AND

25 (e) PROVISIONS THAT PROVIDE ACCESS TO ALL VENDOR RECORDS
26 NECESSARY TO UNDERTAKE A PROPERLY AUTHORIZED AUDIT,
27 EXAMINATION, OR INVESTIGATION.

1 (2) EACH PURCHASING AGENCY SHALL DESIGNATE AT LEAST ONE
2 PERSON WITHIN THE AGENCY RESPONSIBLE FOR MONITORING WHETHER
3 THE ITEMS DESCRIBED IN SUBSECTION (1) OF THIS SECTION HAVE BEEN
4 MET. IN THE ALTERNATIVE TO DESIGNATING ONE PERSON FROM WITHIN
5 THE AGENCY, THE AGENCY MAY USE STAFF MEMBERS FROM THE OFFICE OF
6 THE STATE CONTROLLER OR THE ATTORNEY GENERAL'S OFFICE FOR SUCH
7 PURPOSES.

8 (3) BEFORE A PURCHASING AGENCY MAY ENTER INTO A CONTRACT,
9 THE PERSON SELECTED IN SUBSECTION (2) OF THIS SECTION SHALL CERTIFY
10 THAT THE PROPOSED PERFORMANCE MEASURES AND STANDARDS, DATA
11 SOURCES, AND DATA COLLECTION METHODS PROVIDE A VALID BASIS FOR
12 ASSESSING THE VENDOR'S PERFORMANCE.

13 (4) THE PURCHASING AGENCY SHALL ANNUALLY CERTIFY
14 WHETHER THE VENDOR ON ANY CONTRACT IS COMPLYING WITH THE TERMS
15 OF THE CONTRACT. IF THE AGENCY DETERMINES THAT THE VENDOR HAS
16 NOT COMPLIED WITH THE CONTRACT TERMS INCLUDING, BUT NOT LIMITED
17 TO, PERFORMANCE STANDARDS AND MEASURABLE OUTCOMES, THE STATE
18 SHALL BE ENTITLED TO ANY REMEDY AVAILABLE UNDER LAW IN THE CASE
19 OF CONTRACT NONPERFORMANCE INCLUDING, BUT NOT LIMITED TO,
20 TERMINATION OF THE CONTRACT AND THE RETURN OF ANY AND ALL
21 PAYMENTS MADE TO THE VENDOR BY THE STATE UNDER THE CONTRACT.

22 **SECTION 5. Effective date - applicability.** (1) This act shall
23 take effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly that is
25 allowed for submitting a referendum petition pursuant to article V,
26 section 1 (3) of the state constitution (August 9, 2006, if adjournment sine
27 die is on May 10, 2006); except that, if a referendum petition is filed

1 against this act or an item, section, or part of this act within such period,
2 then the act, item, section, or part, if approved by the people, shall take
3 effect on the date of the official declaration of the vote thereon by
4 proclamation of the governor.

5 (2) (a) The provisions of section 1 of this act shall apply to
6 existing contracts to which the state is a party for which a continuing
7 appropriation will be made for the 2006-07 fiscal year or any subsequent
8 fiscal year and contracts to which the state is a party that have not yet
9 been entered into as of the effective date of this act for which an
10 appropriation will be made for the 2006-07 fiscal year or any subsequent
11 fiscal year.

12 (b) The provisions of sections 2, 3, and 4 of this act shall apply to
13 contracts entered into on or after the applicable effective date of this act.

DRAFT

Bill C

Colorado Legislative Council Staff

STATE
FISCAL IMPACT

Drafting Number: LLS 06-0187
Prime Sponsor(s): Sen. Groff
Rep. Garcia

Date: December 30, 2005
Bill Status: Interim Committee on State
Procurement
Fiscal Analyst: Marc Carey (303 866-4102)

TITLE: CONCERNING THE MONITORING OF VENDOR PERFORMANCE ON STATE CONTRACTS, AND, IN CONNECTION THEREWITH, REQUIRING THE SUBMISSION OF INFORMATION ON THE USE OF PERSONAL SERVICES AND SOLE SOURCE CONTRACTS BY STATE AGENCIES, REQUIRING THE EXISTING STATE DATABASE OF PROSPECTIVE VENDORS TO INCLUDE INFORMATION CONCERNING VENDOR PERFORMANCE, REQUIRING THE DISCLOSURE OF STATE CONTRACT WORK TO BE PERFORMED OUTSIDE THE STATE, ESTABLISHING PROCEDURES FOR MONITORING VENDOR PERFORMANCE, AND AUTHORIZING THE STATE TO PURSUE SPECIFIED REMEDIES FOR VENDOR NONPERFORMANCE.

Fiscal Impact Summary			FY 2006/2007	FY 2007/2008
State Revenues				
General Fund				
State Expenditures				
General Fund			\$987,198*	\$938,793
FTE Position Change			12.4 FTE	14.5 FTE
Effective Date: August 9, 2006. The provisions of section 1 apply to existing contracts for which a continuing appropriation will be made in FY 2006-07 or thereafter. The provisions of sections 2-4 shall apply to contracts entered into after the effective date of this act.				
Appropriation Summary for FY 2006/2007**:			Amount	FTE
Department of Personnel and Administration:			\$501,067	4.0
Department of Agriculture:			\$ 11,314	0.3
Department of Corrections:			\$171,918	3.0
Department of Labor & Employment:			\$124,225	2.2
Department of Natural Resources:			\$111,580	1.9
Department of Public Safety:			\$ 23,070	0.4
Department of Revenue:			\$ 36,824	0.6
Department of Health Care Policy & Financing:			\$ 7,200	
TOTAL — General Fund			\$987,198	12.4
Local Government Impact: None				

* This fiscal note assumes all additional resources for compliance with this bill's requirements will be General Fund.

** Not all departments have responded to date. Costs have been identified for a subset of state agencies and should be treated as the minimum in additional statewide expenditures required to implement this bill.

*** Not all departments have responded to date. Costs have been identified for a subset of state agencies and should be treated as the minimum in additional statewide expenditures required to implement this bill.*

Summary of Legislation

This bill, recommended by the Interim Committee to Study State Procurement, modifies the current state procurement system in several areas by establishing:

- a database and evaluation system for all state contracts for personal services;
- reporting requirements for sole source contracts;
- requirements for disclosure and justification of work performed outside of Colorado or the United States; and
- contract monitoring requirements for all contracts under the state procurement code exceeding \$100,000 in value.

The remainder of this summary details only those provisions which increase expenditures for state agencies.

State Contracts for Personal Services. The bill requires the Department of Personnel and Administration (DPA) to develop and maintain a searchable database, accessible from the state's website, containing all contracts for personal services entered into by state agencies. The database must include the following information:

- the relevant state agency and vendor;
- the duration of employment for any employees on the state's payroll as a result of the contract;
- the purpose, effective dates, and performance periods of the contract;
- the number of times the contract has been renewed; and
- whether the contract was procured competitively or on a sole source basis.

The bill requires any state agency entering into or renewing a personal services contract during a particular calendar year to provide DPA with a report describing the procedures the agency employed in entering into, renewing, and managing the contract. Upon completion of each personal services contract, the contracting agency must perform a post-contract evaluation of vendor performance related to cost, work quality and timeliness.

Contract Monitoring Requirements. The bill requires each contract entered into pursuant to the state procurement code with a value exceeding \$100,000 to contain:

- performance measures and standards developed by the purchasing agency specifically for the contract;
- reporting requirements for the vendor on its achievement of these performance measures and standards;

- monitoring requirements specifying how the purchasing agency will evaluate the contractor's performance, including progress reports, site visits, inspections, and reviews of performance data;
- methods to resolve any situation in which the purchasing agency's monitoring assessment determines noncompliance, including termination of the contract; and
- provisions allowing access to all vendor records necessary to undertake a properly authorized audit, examination, or investigation.

Each purchasing agency must designate one person within the agency or use staff from the Office of the State Controller or the Attorney General's Office to monitor whether the required elements of such contracts have been met. Before the contract begins, the individual selected must certify that the proposed performance measures, standards and data provide a valid basis for assessing vendor performance. The selected individual must also annually certify that the vendor is complying with the terms of the contract. If it is determined that the vendor has not complied, the bill specifies that the state is entitled to legal remedy for contract nonperformance, including contract termination and the return of all payments made to date.

State Expenditures

At a minimum, the state will incur increased expenditures to comply with this bill's requirements in the amount of \$987,198 in FY 2006-07 and \$938,793 in FY 2007-08. The source of funding is identified as GF. **Although staff canvassed all departments in preparing this fiscal note, not all responded. Accordingly, the following summarizes fiscal impacts for a subset of state agencies. Identified costs should be treated as minimum additional statewide expenditures required to implement this bill.**

Department of Personnel and Administration: Database Development. The bill requires DPA to develop and maintain a publicly available database of all personal services contracts entered into by state agencies for each fiscal year that includes specified information. The department will incur increased expenditures associated with the development and maintenance of this database in the amount of \$382,915 in FY 2006-07 and \$195,924 in FY 2007-08. Table 1 below summarizes these expenditures based on the following assumptions:

- a database manager (1.0 FTE) and server manager (1.0 FTE) are hired;
- the server manager will assist with help desk and agency interface duties;
- only on-going training for skills maintenance will be necessary;
- MS-SQL database licenses are purchased for two servers each with four processors;
- corresponding client licenses are purchased for each principal department;
- two web servers are purchased for production, development and testing;
- 80 hours of consulting services will be purchased for software customization; and
- 80 hours of consulting services will be purchased for software integration into existing systems such as COFRS and BIDS.

Table 1: Expenditures Associated with Personal Service Contract Database Development		
	FY 2006/07	FY 2007/08
Personal Services	\$123,333	\$123,333
FTE	2.0	2.0
Operating Expenses and Capital Outlay	\$7,010	\$1,000
Training Expenses		\$3,000
<u>Software Expenses</u>		
Application Software Licenses	\$186,272	
Application Maintenance Licenses		\$62,091
Client Licenses	2,000	2,000
Report Writing Tool	<u>1,000</u>	
Subtotal	\$189,272	\$64,091
<u>Hardware Expenses</u>		
Servers (2)	\$20,000	
Web Servers (4)	10,000	
Server Hosting Fee	<u>4,500</u>	<u>\$4,500</u>
Subtotal	\$34,500	\$4,500
<u>Consulting Expenses</u>		
Software Installation and Customization (\$180/hr)	\$14,400	
Integration into Existing Systems (\$180/hr)	<u>14,400</u>	
Subtotal	\$28,800	
Total Expenses	\$382,915	\$195,924

* This cost assumes high end MS-SQL licenses. To the extent that DPA is already utilizing databases, there may be opportunities for cost reductions from the amount identified here.

State Purchasing Agencies. This bill requires all state agencies, including the DPA to:

- file with DPA and document the justification for all sole source contracts;
- provide DPA with a one-time report on all personal services contracts describing procedures to enter into, renew and manage the contract;
- perform a post-contract evaluation of the vendor on all personal service contracts; and
- monitor all contracts entered into pursuant to the state procurement code with a value over \$100,000 and certify both the evaluation methods and vendor performance on each of these contracts.

State Purchasing Office. The State Purchasing Office within DPA serves as the purchasing agency for all Group I agencies for contracts entered into pursuant to the State Procurement Code. Group I agencies include the Department of Agriculture, the Department of Education, the Governor's Office of Economic Development, the Colorado Commission on Higher Education, the Department of Law, the Department of Local Affairs and the Department of Regulatory Agencies. This fiscal note assumes that while all agencies must comply individually with the first three tasks noted above, the DPA will serve as their purchasing agency for monitoring procurement contracts over \$100,000.

The office will incur additional costs of \$60,476 in FY 2006-07 and \$107,021 in FY 2007-08 to comply with this bill's requirements on behalf of Group 1 agencies, based on the following assumptions:

- the office acts as purchasing agent on an average of 10 contracts annually over \$100,000 for Group I agencies;
- each contract averages four years in length, indicating that the office will be monitoring 10 contracts in year one, 20 in year two, 30 in year three, and 40 annually thereafter;
- the office will initially spend four hours per week monitoring each contract in the first year (this will decrease over time as the office becomes more efficient in complying with these new requirements); and
- existing and any new staff will undergo training in project monitoring as needed by the increased workload, the cost of which would be \$2,800 per person.

Table 2 summarizes the additional expenditures for the office to comply with this bill.

Table 2: State Purchasing Office Contract Monitoring Expenses (on Behalf of Group I Agencies)		
	FY 2006/07	FY 2007/08
Personal Services	\$54,171	\$100,216
FTE	1.0	1.9
Operating Expenses and Capital Outlay	\$3,505	\$4,005
Training Expenses	\$2,800	\$2,800
Total Expenses	\$60,476	\$107,021

Additional resources could be required after FY 2007-08, depending upon the number of contracts and the efficiencies which the office is able to gain in implementing monitoring practices.

Department of Agriculture - Group I Agency. The department will incur increased personal services costs in the amount of \$11,315 and 0.3 FTE in FY 2006-07 and FY 2007-08 to comply with this bill. This amount is based on the following assumptions:

- the department averages 33 personal service contracts annually; and
- it takes 16 hours to document procedures and perform post contract evaluation on each personal services contract;

While other Group I agencies did not respond to requests for information, they may incur similar costs, depending on the number of personal service contracts they enter into.

Group II Agencies. Group II agencies are required to perform all of the tasks discussed above. The bill allows Group II agencies to delegate the monitoring of procurement contracts over \$100,000, to either the State Controller's Office or the Attorney General's Office. This fiscal note assumes that all agencies will choose to perform their own monitoring, and thus incur associated

costs. To the extent that some choose to delegate, associated costs will be incurred by the designee agency.

This fiscal note assumes that an average of 16 hours annually will be required to perform the reporting and post contract evaluation of each personal services contract. These are one-time requirements, and in most departments canvassed, the average contract lasts from 3 to 5 years. These requirements apply to existing contracts for which a continuing appropriation will be made in FY 2006-07 or thereafter.

Estimates for annual resource needs to comply with the contract monitoring requirements of this bill range from 16 hours per contract to 104 hours per contract. With a couple of exceptions, this fiscal note assumes a uniform average of 48 hours per contract per year will be needed over and above that which is currently being done. If agencies determine more resources are needed to comply with this bill, it is assumed that funding adjustments will be addressed through the annual appropriations process.

Table 3 provides an estimate of costs and FTE requirements, by agency, in FY 2006-07 and FY 2007-08. Because monitoring requirements only apply to procurement contracts after the effective date of this bill, resource requirements are higher in the out years.

Table 3: Resource Requirements for Group II Agencies						
Group II Agency	# P.S. Contracts (Average)	New Contracts > \$100,000 (Average)	FY 2006-07		FY 2007-08	
			Expenses	FTE	Expenses	FTE
Corrections**	260	206	\$171,918	3.0	\$162,961	3.0
HCPF***	265	34	\$7,200	NA	\$3,600	NA
Labor	100	60	\$124,225	2.2	\$193,450	3.5
Natural Resources****	211	27	\$111,580	1.9	\$122,799	2.2
Personnel & Administration	551	57	\$57,676	1.0	\$54,671	1.0
Public Safety	13	13	\$23,070	0.4	\$38,269	0.7
Revenue	50	11	\$36,824	0.6	\$48,783	0.9
Total	1,450	408	\$532,493	9.1	\$624,533	11.3

* Information on contract numbers is reported for only some Group II agencies. This table will be updated as additional information becomes available.

** This fiscal note assumes lower monitoring resource requirements as many of the department's contracts are renewed annually and are relatively standardized.

*** This fiscal note assumes that HCPF would hire consultants (\$60/hour for 120 hours in FY 2006-07 and 60 hours in FY 2007-08 to establish procedures, evaluate vendor performance, and train staff on reporting requirements and contract compliance certification.

**** This fiscal note assumes DNR project managers in the field will perform required contract monitoring functions.

State Appropriations

This fiscal note indicates the following General Fund appropriations and FTE authorizations are required in FY 2006-07:

<u>Department</u>	<u>Amount</u>	<u>FTE</u>
Personnel and Administration	\$501,067	4.0
Agriculture	11,314	0.3
Corrections	171,918	3.0
Labor & Employment	124,225	2.2
Natural Resources	111,580	1.9
Revenue	36,824	0.6
Public Safety	23,070	<u>0.4</u>
Health Care Policy & Financing	<u>7,200</u>	
 TOTAL - GF	 \$987,198	 12.4

Departments Contacted

All Departments

Legislative Information Service Staff